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Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			TRAN LIEN, THUY	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHELLY WALTER, WAYNE M. PAFKO,
and MOHAMED M. MORAD

Appeal 2009-011414
Application 10/758,296
Technology Center 1700

Decided: February 24, 2010

Before EDWARD C. KIMLIN, TERRY J. OWENS, and
MARK NAGUMO, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-3, 5-21, 45-57, and 52. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 is illustrative:

1. A parbaked crust for a premium pizza, the crust comprising a flour based dough formula comprising 65 to 75 wt% moisture, 0.5 to 2 wt% sugar sweetener, and less than 2 wt% oil, the parbaked crust capable of expansion upon baking at 350°F to 450°F; wherein the crust edge comprises a registration means engaging edge and the edge has a square or rectangular aspect with a symmetry as the crust is rotated around a central part and has an irregular profile as a result of its manufacture.

The Examiner relies upon the following references as evidence of obviousness (Ans. 2-3):

Stangroom	3,975,552	Aug. 17, 1976
Kordic	5,417,150	May 23, 1995
Vagani	5,441,751	Aug. 15, 1995
Pescheck	5,576,036	Nov. 19, 1996
Ricke	Des. 376,466	Dec. 17, 1996
McDaniel	5,968,566	Oct. 19, 1999
Alessandro	EP 0691078 A2	Jan. 10, 1996

Appellants' claimed invention is directed to a parbaked crust for a premium pizza comprising a flour-based dough formula having the recited ingredients. The edge of the crust has a symmetrical, square or rectangular aspect and has an irregular profile. The edge is capable of engaging a registration means, such as a pin, on a conveyor during processing.

Appealed claims 1-3, 5-9, 11-16, 18-21, 45-47, and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alessandro in view of Stangroom, Vagani, McDaniel, Ricke and Kordic. Claims 10 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combination of references further in view of Pescheck.

Appellants do not present a separate, substantive argument for any particular claim on appeal. Also, Appellants do not separately address the

two rejections of the Examiner under § 103. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we find ourselves in complete agreement with the Examiner's reasoned analysis and application of the prior art, as well as the cogent disposition of the arguments raised by Appellants. Accordingly, we will adopt the Examiner's reasoning as our own in sustaining the rejections of record and we add the following for emphasis only.

Alessandro, like Appellants, discloses a parbaked crust for a pizza that is baked at the claimed temperature of 350-450°F. As recognized by the Examiner, Alessandro does not teach that the edge of the crust has a symmetrical square or rectangular aspect with an irregular profile. However, Kordic evidences that it was known in the art that the edge of a pizza crust can have a round, square or rectangular shape, and Appellants have not refuted the Examiner's finding that it was notoriously well known in the art that the crust of a pizza may have a square or rectangular shape. As for the edge of the crust having the claimed irregular profile, we agree with the Examiner that Ricke discloses a scallop edge for a pizza crust which qualifies as having the claimed irregular profile.

Accordingly, based on the collective teachings of Alessandro, Kordic and Ricke, we find no error in the Examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to form the pizza crust of Alessandro such that it has a symmetrical square or rectangular shape and an irregular profile. Regarding the claimed amounts of moisture, sugar sweetener, and oil, we find that the Examiner has presented substantial evidence that it would have been obvious for one of ordinary skill in the art

to formulate a pizza crust with the claimed amounts of the conventional ingredients. It is well settled that where patentability is predicated upon a change in a condition of a prior art composition or recipe, such as a change in concentration or the like, the burden is on the applicant to establish with objective evidence that the change is critical, i.e., it leads to a new, unexpected result. *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990); *In re Aller*, 220 F.2d 454, 456 (CCPA 1955). In the present case, Appellants merely present conclusory remarks concerning the non-obviousness of formulating a pizza crust having the claimed amounts of recited ingredients. Appellants have proffered no objective evidence demonstrating unexpected results for parbaked pizza crusts within the scope of the appealed claims.

Appellants contend that “[n]one of the references discloses an edge with a registration means let alone any functionality” (Br. 28, last para.). However, we agree with the Examiner that this argument is not germane to the claimed subject matter inasmuch as the claims do not recite “a registration means” but, rather, an edge of the crust which engages a registration means, such as a pin. As correctly stated by the Examiner, “[t]he registration means engaging means as defined in appellant’s specification is a recessed portion found on the edge such as in figure 1A in relation to pins 105” (Ans. 9, second para.). Consequently, we agree with the Examiner that the recessed portion of Ricke’s crust is fully capable of engaging a registration means in accordance with the claimed invention. Appellants have presented no argument for why a pizza crust of the type disclosed by Ricke would not be capable of engaging a registration means. As pointed out by the Examiner, the appealed claims are not directed to a process of making a parbaked crust for a premium pizza but, rather, to the

Appeal 2009-011414
Application 10/758,296

crust itself. Also, we note that it was notoriously well known to use registration marks that cooperate with registration means in automated, conveyor processes.

According to Appellants, “it is surprising the applicants discovered that an irregular edge for mimicking a handmade crust could be made utilizing automatic production equipment or utilized with such indicia for precise crust placement for strategically locating and evenly topping a frozen pizza with automatic production equipment to produce a high quality, premium frozen pizza” (Br. 15, second para.). However, as noted above, Appellants have presented no objective evidence of any surprising or unexpected results. Furthermore, as also observed above, the appealed claims define a pizza crust and not any process of making it.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner’s decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

ssl

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